

MEMORANDUM

Date: November 11, 2001

FOR: Olga Kebis

FROM: Meggan Engelke-Ros
Office of General Counsel for Environmental Compliance

SUBJECT: Fall Protection

I. OSHA

The Occupational Safety and Health Act (OSHA)¹, enacted into law in 1970, is the Federal Statute which addresses worker safety and health. OSHA by its terms does not apply to Federal agencies because it only applies to “employers” who have “employees” which by statutory definition excludes the Federal Government. Specifically, OSHA defines these terms as follows:

The term “employer” means a person engaged in a business affecting commerce who has employees, but does not include the United States . . .²

The term “employee” means an employee of an employer who is employed in a business of his employer which affects commerce.³

Although excluded from direct regulation by definition, Federal agencies are required, under OSHA, to provide their employees with “healthful and safe places and conditions of employment.”⁴ In

¹ 29 U.S.C. § 651 *et seq.*

² 29 U.S.C. § 652(5)

³ 29 U.S.C. § 652(5)

⁴ 29 U.S.C. § 668 (a)(1)

addition, Executive Order 12580 provides that Federal agencies must comply with OSHA standards unless the Secretary of Labor has approved an alternative standard.

II. Fall Protection

OSHA requires employers to provide employees with personal fall arrest systems with dee-rings and snaphooks with a minimum tensile strength of 5,000 pounds. In addition employers are required to provide anchorages for attachment of personal fall arrest equipment capable of supporting at least 5,000 pounds per employee attached.⁵

The issue has been raised by NWS field personnel that they are not qualified to assess the support capacity of a given attach point and that the NWS towers are not equipped with placards certifying that they meet this criterion. This is something that needs to be addressed.

Employees have raised concerns regarding liability that might attach to them personally should they attach themselves to a structural support that fails.

As was stated at the beginning of this memo, OSHA applies only to employers. However, OSHA does require employees to “comply with occupational safety and health standards and all rules, regulations, and orders pursuant to this Act which are applicable to his own actions and conduct.”⁶ That being said, in the case of employee failure to comply with OSHA regulations resulting in injury to the employee himself/herself, it is difficult to see how any liability could attach to the employee. An employee injured in either of the scenarios mentioned above would be able to recover under the Federal Employees Compensation Act (FECA)⁷, even if that employee’s conduct was negligent.⁸

⁵ 29 CFR § 1926.502. This regulations are intended to apply to construction, however it makes sense to apply them here as well.

⁶ 29 U.S.C. § 654 (b)

⁷ 5 U.S.C. § 1801 *et seq.*

⁸ 5 U.S.C.S § 8102 (a). However, employees may be barred from claims under FECA for certain types of willful misconduct. Note also that employee compensation is limited to the schedule established by FECA.